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5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF OHIO
7 WESTERN DIVISION
8 - - -

9 HENRY WILLIAMS, :
10 :
11 Plaintiff, :
12 :
13 vs. : CASE NO. C-1-02-533
14 :
15 MILTON CAN COMPANY, INC. and :
16 BWAY MANUFACTURING, :
17 :
18 Defendants. :
19 :
20 - - -

21 DEPOSITION

22 of ROBERT FRANCIA, taken before me, Kathy J. Nicholson,
23 Registered Professional Reporter and Notary Public in and
24 for the State of Ohio at large, as on cross-examination,
25 at the Hampton Inn, 858 Eastgate North Drive, in the City
of Batavia, County of Clermont, and State of Ohio, on
Thursday, the 1st day of April, 2004, beginning at 9:13
o'clock, a.m.
- - -

1 Q. You recall the date of this accident?

2 A. No, I don't.

3 Q. Does July 29th, 2000 sound about right?

4 A. It's probably about right.

5 Q. It was a Saturday?

6 A. Yes.

7 Q. An inventory day?

8 A. Yes.

9 Q. Do you recall about what time in the morning it
10 happened?

11 A. No, I think maybe 9 or 10.

12 Q. Okay. If the accident report says 7:50, could
13 it have been closer to 8?

14 A. Yeah, could have been. Like I said, I really
15 don't know what time it was.

16 Q. Do you remember how long you'd been at the plant
17 that day?

18 A. Well, got there at 7.

19 Q. And --

20 A. I think I actually got there about 6:30, but the
21 work started at 7.

22 Q. Okay. And does that refresh your recollection
23 how long you'd been doing inventory that day before this
24 incident occurred? I mean was it a long time?

25 A. We started out at 7 o'clock. We started out at

1 7 o'clock. They sent me back in the warehouse to help
2 inventory cans back there, and sent me up front to get a
3 fork truck, and then foreman up there grabbed me to do
4 something, to move a load out so they wouldn't inventory
5 it, to take it outside, which I did.

6 Q. Okay. Let's back up. You said first they put
7 you in warehouse to inventory?

8 A. Back in the warehouse to inventory cans, right.

9 Q. Who put you in the warehouse to inventory? Who
10 assigned you there?

11 A. I don't know who set up the schedule or who did
12 that.

13 Q. Do you remember who your supervisor was that
14 day?

15 A. No. I think they were all there. I don't know
16 which one would have actually been doing all that unless
17 it was Ralph Briggs. I don't know.

18 Q. Who was your normal supervisor?

19 A. Ralph Briggs.

20 Q. Then you said they took you out of or somebody
21 sent you from the warehouse to get a fork truck?

22 A. Yeah, we needed a fork truck to get some of the
23 loads out of the way to get to the cans to be able to
24 count them.

25 Q. Okay. So who sent you for the fork truck?

1 A. Nobody. I can't remember anybody actually
2 sending me, telling me to go get it. I knew we needed it,
3 we had to have it to move it, to move the loads, and I
4 asked, seems like I asked one of the guys, one of the
5 bosses that was back in warehouse, and he said go up front
6 and get one, and I really can't recall what all was said.

7 Q. Was there a specific place in the plant where
8 they kept all the fork trucks?

9 A. No, no.

10 Q. Were there no fork trucks back in the warehouse
11 area?

12 A. There was other people back there working the
13 fork trucks that were doing, you know, doing counting here
14 and there. There were other people back there working,
15 yes.

16 Q. I guess were you doing inventory with a group?

17 A. Yes.

18 Q. And so some of these other groups had fork
19 trucks that they were using?

20 A. Yes.

21 Q. They had used all of the fork trucks that were
22 in the warehouse, is that correct?

23 A. Yes.

24 Q. And so your group had to get their own fork
25 truck, correct?

1 they were all pitching in to help inventory, correct?

2 A. Yes, we had management people all over the
3 place.

4 Q. Wasn't normal production day?

5 A. No.

6 Q. Lines weren't running?

7 A. No.

8 Q. So you weren't transporting product from the
9 line to storage or warehouse, it wasn't a normal day for
10 fork truck use, correct?

11 A. It wasn't a regular workday, no.

12 Q. On an inventory day, would you expect more
13 pedestrian traffic?

14 A. Both. There's more, actually more forklift
15 traffic and pedestrian traffic both on that day.

16 Q. So it wouldn't surprise you that there would be
17 pedestrians or fork trucks out on the loading dock?

18 A. Well, out on the loading docks, yes, it would,
19 because there's no reason, there was no reason for anybody
20 to be out on the dock to do the inventory. All the
21 inventory was inside the plant.

22 Q. Fork trucks needed LP, right?

23 A. Yeah, they need to be fueled.

24 Q. And that was the closest LP storage tank, rack
25 to the manufacturing area --

1 Q. Tell me about that. How long were you there?

2 A. I was only there five years, five or six years.

3 Q. What years, if you can remember?

4 A. I think I went in there in '65 or '66, and left
5 there I think in '71 I think.

6 Q. Once again, that was before OSHA. Do you recall
7 if you had to get a fork truck license separate from your
8 driver's license?

9 A. Yeah. Well, no, I don't remember then. Then we
10 had forklift trucks, and they had platform trucks I think.
11 I can't remember what all. They had several different
12 kind of vehicles there.

13 Q. Did you ever have any accidents involving those
14 trucks at Milacron?

15 A. No.

16 Q. Ever hit any product, structure, person?

17 A. No.

18 Q. Were you ever reprimanded for an unsafe act at
19 Milacron?

20 A. No.

21 Q. How often did you drive at Milacron, every day
22 or was it just as needed?

23 A. No, it wasn't every day.

24 Q. And why did you leave Milacron?

25 A. Got laid off. They downsized.

1 Q. Is that the job you had immediately before
2 coming to Bway?

3 A. No.

4 Q. Or whatever, Heekin, whatever it was at the
5 time?

6 A. No.

7 Q. Where did you go from Milacron? Was that down
8 to West Virginia?

9 A. I went to West Virginia.

10 Q. And Indiana?

11 A. Indiana.

12 Q. And back here?

13 A. Back here.

14 Q. And Heekin I believe was what it was called or
15 was it Milton?

16 A. It was Heekin.

17 Q. Do you remember what your seniority date is?

18 A. '76. I don't know. I don't remember the exact
19 date.

20 Q. What training did you get at Milacron to drive
21 the fork truck?

22 A. Studied the manual. Studied the manual, and man
23 took me out on a fork truck and had me pick up this and
24 that, everything, move this here and there. That was all
25 I remember of it.

1 He's since retired and gone.

2 Q. Was it the guy that was there before Corky
3 Kobmann?

4 A. I don't know. I don't know who. I don't know
5 if there's anybody between he and Corky or not.

6 Q. What did your training entail? Did you have a
7 class?

8 A. Like I said, studied the manual, and I can't
9 remember when exactly I saw the movie, but I saw that
10 movie. They showed the movie about watching overhead, you
11 know, lifting up a load, especially overhead, and going
12 out on a wet dock. That would have been probably maybe
13 '66, '65, somewhere in there.

14 Like I said, then he took us out and put me out,
15 put me on a fork truck.

16 Said, "Move this here, there."

17 At that time, the fork truck, he said, "I hate
18 to have you use this fork truck," because it wasn't the
19 best fork truck in the world.

20 The power steering was going out of it or
21 something, but I didn't have any problem with it.

22 He said, "If you can drive this, you can drive
23 any of them," but I don't know what he thought was wrong
24 with that particular truck.

25 I think it was a little hard to steer, you know.

1 Q. Anybody ever tell you that the company wasn't
2 able to find your driver qualification file?

3 A. No, I didn't know anybody ever even looked for
4 it.

5 Q. So in D&I, you drove a fork truck --

6 A. Uh-huh.

7 Q. -- for ten to fifteen years?

8 A. No.

9 Q. Okay.

10 A. No, I went back to D&I as a utility operator,
11 and then I went on to the mechanic's job.

12 Q. And did you have to drive a fork truck as a
13 mechanic?

14 A. No.

15 Q. Did you keep your, well, strike that.

16 When you took that first test where the guy says
17 he's sorry he's putting you on this bad fork truck, but go
18 move this stuff, and you did that satisfactorily, did he
19 give you a certificate or anything that said you're now a
20 licensed fork truck driver?

21 A. Yes.

22 Q. Did you ever have to take that test again before
23 the period where your license lapsed?

24 A. No.

25 Q. Okay. So how long were you a utility operator

1 really remember when I come out, back out into assembly.

2 I can't remember how long D&I has been gone.

3 Q. So from maintenance, you went to assembly?

4 A. Right.

5 Q. What did you do in assembly?

6 A. Went over there as a maintainer. As a mechanic
7 over there also.

8 Q. Same job description, just different area of the
9 plant?

10 A. Generally the same job description, just
11 maintain the machinery.

12 Q. No fork truck driving?

13 A. No fork truck driving.

14 Q. You didn't have your license at that time?

15 A. No.

16 Q. You told me that it had lapsed, correct?

17 A. Yes. Had no need for it.

18 Q. How long were you a maintainer in assembly?

19 A. Years. Up till maybe four years ago, five years
20 ago maybe.

21 Q. So '99, '2000?

22 A. I can't remember. Whenever my shoulder went
23 out, which I really can't remember when that was.

24 Q. Maybe I can help you out.

25 A. I think it was '98, but I can't remember.

1 Q. What did you do in salvage?

2 A. Sorting the cans, scrapping cans, whatever it
3 took to, you know, to get rid of bad cans.

4 Q. Okay. My understanding in salvage, there may be
5 a pallet of cans or product, some of which may be good,
6 some of which may be bad, and you're sorting through that,
7 scrapping the bad, restacking the good, and putting it
8 back out into production or into storage?

9 A. Back in the warehouse, right.

10 Q. How often would you drive the truck in salvage?

11 A. Every day.

12 Q. How long was your shift; eight, ten hours?

13 A. Yeah. Yeah. Eight hours, sometimes more. A
14 lot of overtime back then.

15 Q. In the '98 to 2000 time frame, how much of your
16 eight to ten-hour shift was spent driving that truck as
17 opposed to sorting through product or scrapping stuff?

18 A. Oh. Probably about half of it. A couple of
19 hours anyway.

20 Q. All right.

21 A. At least two, sometimes a lot more.

22 Q. Now, you told me that because it had been so
23 long since you had driven the truck in D&I and the time
24 that you got assigned back to the truck in salvage, that
25 you had to get relicensed?

1 A. Uh-huh.

2 Q. And was that Corky Kobmann, was he the trainer
3 at that point?

4 A. Yes.

5 Q. We've talked to him. Tell me what you recall
6 about Corky's training course? Was there classroom work?

7 A. I really don't remember a whole lot about what
8 Corky did that was any different than what any of the rest
9 of them did.

10 Q. Do you remember how long it took between the
11 time you went to Cork and said hey, Cork, I'm here to get
12 licensed to go back on the trucks and the time that Corky
13 certified you? Was it a whole shift?

14 A. I don't remember. I don't remember.

15 Q. You don't remember whether it was more than a
16 day, less than a day?

17 A. No, I don't remember.

18 Q. Do you remember ever being trained by Corky more
19 than once?

20 A. No, I don't.

21 Q. So you think that you only went to Corky for the
22 certification one time when you got back on the truck in
23 '98?

24 A. Uh-huh.

25 Q. You don't recall ever being sent back to Corky

1 I voluntarily gave my license.

2 Told them, "Take them. If you don't want me on
3 the truck, fine, I won't drive a truck."

4 Q. When was that?

5 A. I guess whenever this gentleman at the one
6 place, when this gentleman said that he had to drive for
7 me.

8 Q. Allen Artis?

9 A. Yes. Which I don't know anything about that. I
10 don't know who told him that or where that came from.

11 Q. Okay. Maybe I can help jog your memory. Do you
12 recall an incident where you had a near miss with Allen,
13 and you and he got into a dispute over that, and he may
14 have threatened to, pardon my French, kick your ass or
15 something to that effect? Do you recall that?

16 A. Me and Allen had more than one run-in with or
17 without the fork truck.

18 Q. Okay.

19 A. On that particular incident, I do not know, and
20 I was not suspended because of him.

21 Q. Do you recall having a run-in with Allen about
22 the fork truck?

23 A. Like I say, a near miss with Allen? Actually, I
24 do not remember that specific thing. Allen Artis at
25 times, several times, whether with a fork truck or

1 to see what was behind me.

2 Q. Tell me what you did after you placed the skid?

3 A. After I placed the skid?

4 Q. Yeah.

5 A. I looked back and backed up.

6 Q. Okay. You're showing me you looked over your
7 right shoulder?

8 A. I looked over my right shoulder, and I was
9 against the wall, and I saw the skids, and you really
10 can't see anything this way, so I looked the other way.

11 Q. So there were skids behind you?

12 A. No, no, no. I was up against the wall. I was
13 within a foot or so.

14 Q. You were looking in your mirrors?

15 A. No, I physically turned my head and looked back.
16 I looked to the right, and because I wasn't quite straight
17 at the wall, I could see the white, whatever kind of tanks
18 they are out in the field, so I had to look to see, and I
19 looked back around, and I'm up against the wall, and I did
20 see the tanks I think, pretty sure I remember actually
21 seeing the tanks, but I'm up against the wall, and I
22 thought you've got to look back the other way too, so I
23 looked back the other way, and I still didn't see
24 anything, because I wanted to know why I could see those
25 tanks out in the field, why I couldn't see on down the

1 dock, and I looked all around.

2 Q. So you looked in both mirrors and over both
3 shoulders?

4 A. I don't even remember looking in the left side
5 mirror. I don't remember whether I looked in there or
6 not. I looked in the right mirror I guess because I'm
7 right handed, I looked in the right, and I saw them white
8 tanks. I'll never forget those white tanks. I don't
9 remember why. I guess they reminded me so much to look,
10 and I looked and still didn't see him.

11 Q. Do you know from your own knowledge whether Jake
12 was out there before you ever came out onto the dock with
13 that load of cans?

14 A. I did not see him when I come out that door. If
15 he was there, I did not see him.

16 Q. You weren't planning on turning right, correct?

17 A. I was not planning on turning right.

18 Q. And you expected that --

19 A. I knew there was nothing to the right. The
20 tanks are there, and there's no place to go to the right.

21 Q. So did you even look to the right as you exited
22 and were worried about hitting cans on the left?

23 A. I did look. I still don't remember seeing him
24 if he was there.

25 Q. It's possible he was there?

1 ultimately learned Jake and his fork truck were, he should
2 have been visible to you in your position, correct?

3 A. I would have thought so. Like I say, those
4 Toyotas do have the big hump back ends on them. Things I
5 have been told since then would be hearsay, so I don't
6 guess I should get into that.

7 Q. What have you been told? Something about him
8 bending over to get his hat?

9 A. Well, I don't know. That's what I was told,
10 that he was bent over doing whatever. I don't know what.
11 He was bent over, and that's why I couldn't see him.
12 That's why I wouldn't have been able to see him over that
13 hump.

14 Q. Had you not hit Jake, you would have hit his
15 fork truck, is that correct?

16 A. I don't think so. I don't know. When I hit
17 Jake, I was braking. I was already on the brake when I
18 hit him to go back in the door.

19 Q. Where was Jake's fork truck? And you can use
20 the photographs if you need.

21 A. I don't know. I don't know. It was somewhere
22 around between the door and the tanks I think. I guess.
23 I don't know. I really don't know where it was.

24 Q. Let's look at Exhibit 3. Is this the same rack
25 that was there on the date of the injury?

1 going to try to help him, but I thought get help. You
2 can't help this guy. You're too personally involved.
3 You've got to get help.

4 Q. You didn't leave him pinned between the two
5 trucks?

6 A. No. No, I pulled forward. He told me to pull
7 forward, and I pulled forward, didn't I, Jake?

8 MR. WILLIAMS: No, you didn't, Bob.

9 BY MR. ALLEN:

10 Q. Who did you go to?

11 A. I went running in the plant looking for anybody
12 I could. First man I seen, I can't remember who it was I
13 saw.

14 I told him, I said, "I hit Jake. He's out on
15 the dock."

16 I can't remember who it was. He headed that
17 way, and then next guy I saw I think was Ralph, and I told
18 him the same thing.

19 I said, "I hit Jake. He's out on the dock."

20 I believe that's the exact words I used even. I
21 can't remember, but I think it is.

22 Q. Then did you go back out to the dock?

23 A. Yeah, I went back out to the dock and sit down
24 on a skid of cans out there.

25 Q. The ones that you took out?

1 A. I don't remember.

2 Q. Did you hear or see anything about what was
3 going on with Jake?

4 A. I was, you know, fifteen, twenty feet away. I
5 was trying to watch and praying for him. I really don't
6 know what all they were doing to him or anything like that
7 or what they said to him or what he said to anybody. I
8 don't know.

9 Q. How long were you out on the dock?

10 A. I don't know. Seemed like forever.

11 Q. Then where did you go after you left the dock?

12 A. Then they took me up to the office.

13 Q. Whose office?

14 A. Ralph Briggs' office.

15 Q. Who was there?

16 A. Ralph Briggs and whoever was personnel back
17 then. I don't remember who all was there.

18 Q. Before this accident, did anybody ever come to
19 you and say you're going to kill somebody or you're going
20 to hurt somebody, you shouldn't be driving?

21 A. Not that I remember.

22 Q. Did you ever hear that anybody went to
23 management and said that about you?

24 A. Not that I know offhand. I don't remember. I
25 mean it's possible. I just don't remember.

1 Q. I just have a few questions, and I will not be
2 long, I promise. Mr. Francia, at the time of Jake's
3 accident, did you have a valid Ohio driver's license?

4 A. Yes, I did.

5 Q. At the time of Jake's accident, did you have a
6 license to operate a forklift truck while at Bway?

7 A. Yes, I did.

8 Q. Was Jake a well-liked individual at the plant?

9 A. Yes.

10 Q. Did you have any animosity with Jake?

11 A. No, we had a lot of fun.

12 Q. Were you aware of anybody at Bway, i.e., members
13 of management at Bway that had any animosity or warranted
14 any ill will toward Jake?

15 A. Not that I know of.

16 Q. Did you intend to hit Jake with the fork truck
17 the day of the accident?

18 MR. ALLEN: Objection. You can answer.

19 THE WITNESS: No way.

20 BY MR. BLACK:

21 Q. Prior to Jake's accident, had you ever been
22 involved in a forklift accident where you hit a pedestrian
23 with your fork truck?

24 A. No.

25 MR. BLACK: That's all I have.

VERBAL REPRIMAND

DATE: 2/18/00

EMPLOYEE: BOB FRANCIA

SEN DATE 3/11/76 DEPARTMENT:

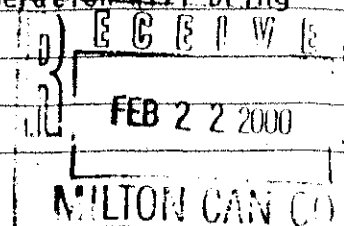
EMPLOYEE'S POSITION:

DATE OF POSITION:

INCIDENT REPORT (DESCRIPTION OF VIOLATION[S]):

THE FOLLOWING VIOLATION(S) HAS/HAVE OCCURRED AND NECESSITATE THE ISSUANCE OF A VERBAL REPRIMAND. THIS NOTICE WILL BECOME PART OF YOUR PERMANENT PERSONNEL RECORD. FURTHER VIOLATIONS WILL RESULT IN DISCIPLINARY ACTION.

This reprimand is for operating your tow motor in an unsafe manner resulting in the following incidents: 2/7- failure to look behind you before backing up; 2/8- spilled load of cans; 2/8- sliding off back of dock. Any future incidents of unsafe operation will bring further disciplinary action.



EMPLOYEE'S COMMENTS:

2-18-00

DATE GIVEN TO EMPLOYEE

Robert S. Francis

EMPLOYEE'S SIGNATURE

COMMENTS

(INCLUDING RECOMMENDED CORRECTIVE ACTIONS, FOLLOW-UP INSTRUCTIONS, ETC.)

People in this plant ignore trucks totally. Loads loosen up after setting for months loads are moved to salvage without proper

banding from all shifts. (over)

SUPERVISOR

Luther Smith

Walt Valentine 2/21/00

OPERATIONS MANAGER

Walt Valentine

HUMAN RESOURCES MANAGER

UNION REPRESENTATIVE

MDC

ORIGINAL: PERSONNEL FILE/HR OFFICE
COPIES: SUPERVISOR
UNION REPRESENTATIVE (FORM ONLY)
EMPLOYEE



1 STATE OF OHIO :
2 : SS C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF MONTGOMERY :
4

5 I, Kathy J. Nicholson, a Certified Realtime
6 Reporter and Notary Public in and for the State of Ohio at
7 Large, duly commissioned and qualified;

8 DO HEREBY CERTIFY that the above-named ROBERT
9 FRANCIA, was by me first sworn to testify to the truth,
10 the whole truth, and nothing but the truth; that his
11 testimony was recorded by me in stenotype and thereafter
12 reduced to typewriting; and was taken at the time and
13 place hereinabove set forth.

14 I FURTHER CERTIFY that I am not a relative or
15 attorney of either party, nor in any manner interested in
16 the event of the action.

17 IN WITNESS WHEREOF I have hereunto set my hand
18 and affixed my seal of office on the 9th day of April,
19 2004.
20
21

22 Kathy J. Nicholson
23 KATHY J. NICHOLSON, RPR, CRR
24 NOTARY PUBLIC, STATE OF OHIO
25 My commission expires 8/24/07

- - -